

Todd M. Friedman (SBN 216752)
Suren N. Weerasuriya (SBN 278512)
Adrian R. Bacon (SBN 280332)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
324 S. Beverly Dr., #725
Beverly Hills, CA 90212
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com
abacon@attorneysforconsumers.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SONIA BARRIENTOS, on behalf of) Case No.
herself and all others similarly situated,)
Plaintiff,) **CLASS ACTION**
vs.) **COMPLAINT FOR VIOLATIONS**
COLLECTO, INC. DBA EOS CCA,) **OF:**
and DOES 1 through 10, inclusive, and) 1. VIOLATIONS OF
each of them,) ELECTRONIC FUNDS
Defendants.) TRANSFER ACT [15 U.S.C.
§1693 ET SEQ.]
DEMAND FOR JURY TRIAL

Plaintiff SONIA BARRIENTOS (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following against Defendant “COLLECTO, INC. DBA EOS CCA” upon information and belief based upon personal knowledge:

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1 5. Venue and personal jurisdiction in this District are proper pursuant to
2 28 U.S.C. 1391(b) because Plaintiff Sonia Barrientos resides within this District
3 and is a resident of California, and Defendant does or transacts business within
4 this District, and a material portion of the events at issue occurred in this
5 District.
6

7
8 **PARTIES**
9

10 6. Plaintiff is a natural person residing in Los Angeles County,
11 California.
12

13 7. Within the last year, Defendant attempted to collect consumer debts
14 from Plaintiff.
15

16 8. Defendant is a collection agency headquartered in Norwell,
17 Massachusetts.
18

19 9. Defendant is a business entity engaged in the collection of debt
20 within the State of California.
21

22 10. The principal purpose of Defendant's business is the collection of
23 debts allegedly owed to third parties.
24

25 11. During the course of its attempts to collect debts allegedly owed to
26 third parties, Defendant sends to alleged debtors bills, statements, and/or other
27 correspondence, via the mail and/or electronic mail, and initiates contact with
28

1 alleged debtors via various means of telecommunication, such as by telephone
2 and facsimile.

3 12. Defendant acted through its agents, employees, officers, members,
4 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
5 representatives, and insurers.
6

7
8 **FACTUAL ALLEGATIONS**
9

10 13. In or around December 2014, Defendant began contacting Plaintiff
11 in attempt to collect a consumer debt from Plaintiff in connection with an
12 alleged debt originally owed to Verizon (the “Account”).
13

14 14. The alleged debt arose from transactions for personal, family, and
15 household purposes.
16

17 15. Defendant sent a letter to Plaintiff with an offer to settle Plaintiff’s
18 Account.
19

20 16. Soon after Plaintiff received the letter, Plaintiff spoke with a
21 representative of Defendant in effort to resolve the Account.
22

23 17. On January 1, 2015, During phone conversations, and at
24 Defendant’s urging, Plaintiff agreed orally to allow Defendant to electronically
25 draw a fixed sum of \$162.58 per month out of Plaintiff’s checking account
26 towards resolution of the outstanding Account, until further notice.
27

28 18. Defendant did not provide to Plaintiff, nor did Plaintiff execute, any

1 written or electronic writing memorializing or authorizing the recurring or
2 automatic payments.

3 19. Plaintiff did not provide Defendant either with a written or an
4 electronic signature authorizing the recurring or automatic payments.
5

6 20. Despite this, Defendant has continued to draw unauthorized
7 amounts on a recurring basis from Plaintiff's checking account.
8

9 21. Because of the foregoing, Plaintiff has continued to have the
10 unauthorized amounts electronically drawn from her personal checking
11 account, has repeatedly been placed in jeopardy of incurring overdraft penalties
12 and fees with her bank, and has risked adverse entries on her credit report and
13 financial history as a result of Defendant's unauthorized acts.
14
15

16 **CLASS ALLEGATIONS**
17

18 22. Plaintiff brings this action on behalf of herself and all others similarly
19 situated, as a member of the proposed class (hereafter "The Class") defined as
20 follows:
21

22 All persons in the United States whose bank accounts
23 were debited on a reoccurring basis by Defendant
24 without Defendant obtaining a written authorization
25 signed or similarly authenticated for preauthorized
26 electronic fund transfers within the one year prior to the
27 filing of this Complaint.
28

1
2 23. Plaintiff represents, is a member of, The Class, consisting of all
3 persons within the United States whose bank account was debited on a recurring
4 basis by Defendant without Defendant obtaining a written authorization signed or
5 similarly authenticated for preauthorized electronic fund transfers within the one
6 year prior to the filing of this Complaint.
7

8
9 24. Defendant, its employees and agents are excluded from The Class.
10 Plaintiff does not know the number of members in The Class, but believes the
11 Class members number in the thousands, if not more. Thus, this matter should be
12 certified as a Class Action to assist in the expeditious litigation of the matter.
13

14 25. The Class is so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Class
16 members are unknown to Plaintiff at this time and can only be ascertained
17 through appropriate discovery, Plaintiff is informed and believes and thereon
18 alleges that The Class includes thousands of members. Plaintiff alleges that The
19 Class members may be ascertained by the records maintained by Defendant.
20
21

22
23 26. This suit is properly maintainable as a class action pursuant to Fed. R.
24 Civ. P. 23(a) because the Class is so numerous that joinder of the Class members
25 is impractical and the disposition of their claims in the class action will provide
26 substantial benefits both to the parties and to the Court.
27
28

1 27. There are questions of law and fact common to the Class affecting the
2 parties to be represented. The questions of law and fact to the Class predominate
3 over questions which may affect individual Class members and include, but are
4 not necessarily limited to, the following:
5

6 a. The members of the Class entered into oral agreements with
7 Defendant to have automatic, or recurring, electronic payments
8 drawn from their personal accounts to be paid to Defendant towards
9 settlement of the Class members' outstanding accounts with
10 Defendant.
11

12 b. The members of the Class were not provided with, nor did
13 they execute, written agreements memorializing the automatic or
14 recurring electronic payments.
15

16 c. Defendant did not request, nor did it provide, Class members
17 with written agreements memorializing the automatic or recurring
18 electronic payments.
19

20 d. The members of the Class did not provide either a written
21 ("wet") or otherwise electronic signature authorizing the automatic
22 or recurring electronic payments.
23

24 e. Despite not providing written or electronic authorization for
25 payments to be drawn from their accounts, Defendant took
26
27
28

1 unauthorized payments from Class members' accounts.

2 f. The unauthorized payments taken by Defendant frequently
3 subjected Class members to non-sufficient funds ("NSF") fees,
4 penalties, and other charges to be incurred by the Class members at
5 their respective financial and banking institutions, as well as
6 negative reporting to Class members' credit histories, with serious
7 adverse consequences to the Class members' credit-worthiness.
8
9

10 28. As persons whose bank accounts were debited on a reoccurring basis
11 by Defendant without Defendant obtaining a written authorization signed or
12 similarly authenticated for preauthorized electronic fund transfers, Plaintiffs are
13 asserting claims that are typical of The Class.
14
15

16 29. Plaintiff will fairly and adequately protect the interests of the members
17 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
18 class actions.
19

20 30. A class action is superior to other available methods of fair and
21 efficient adjudication of this controversy, since individual litigation of the claims
22 of all Class members is impracticable. Even if every Class member could afford
23 individual litigation, the court system could not. It would be unduly burdensome
24 to the courts in which individual litigation of numerous issues would proceed.
25 Individualized litigation would also present the potential for varying, inconsistent,
26
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1 or contradictory judgments and would magnify the delay and expense to all
2 parties and to the court system resulting from multiple trials of the same complex
3 factual issues. By contrast, the conduct of this action as a class action presents
4 fewer management difficulties, conserves the resources of the parties and of the
5 court system, and protects the rights of each Class member.
6

7
8 31. The prosecution of separate actions by individual Class members
9 would create a risk of adjudications with respect to them that would, as a practical
10 matter, be dispositive of the interests of the other Class members not parties to
11 such adjudications or that would substantially impair or impede the ability of such
12 non-party Class members to protect their interests.
13

14
15 32. Defendant has acted or refused to act in respects generally applicable to
16 The Class, thereby making appropriate final and injunctive relief with regard to
17 the members of the Class as a whole.
18

19 33. Defendant failed to comply with the writing and notice requirements of
20 § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class members with respect
21 to the above alleged transactions.
22

23 34. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
24 “preauthorized electronic fund transfer from a consumer’s account may be
25 authorized by the consumer only in writing, and a copy of such authorization
26 shall be provided to the consumer when made.”
27
28

1 35. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
2 term “preauthorized electronic fund transfer” means “an electronic fund transfer
3 authorized in advance to recur at substantially regular intervals.”
4

5 36. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
6 “[p]reauthorized electronic fund transfers from a consumer’s account may be
7 authorized only by a writing signed or similarly authenticated by the consumer.
8 The person that obtains the authorization shall provide a copy to the consumer.”
9

10 37. Section 205.10(b) of the Federal Reserve Board's Official Staff
11 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
12 authorization process should evidence the consumer’s identity and assent to the
13 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
14 provides that “[a]n authorization is valid if it is readily identifiable as such and
15 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
16 at ¶10(b), comment 6.
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19

20 38. In multiple instances, Defendant debited bank accounts of the Class
21 members on a recurring basis without obtaining a written authorization signed or
22 similarly authenticated by the respective Class members for preauthorized
23 electronic fund transfers from the accounts of the respective Class members,
24 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
25 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
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28

1 39. In multiple instances, Defendant debited Class members' bank
2 accounts on a recurring basis without providing a copy of a written authorization
3 signed or similarly authenticated by the respective Class members for
4 preauthorized electronic funds transfers, thereby violating Section 907(a) of the
5 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
6 205.10(b).
7
8

9 40. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and
10 preferable because, on information and belief, the putative class consists of
11 hundreds, if not thousands, of individuals and is so numerous that joinder of all
12 putative class members, whether otherwise required or permitted, is
13 impracticable. The actual number of putative class members is in the exclusive
14 control of Defendant.
15
16

17 41. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and
18 preferable, because Plaintiff will fairly and adequately protect the interests of the
19 Class and Plaintiff has hired counsel able and experienced in class action
20 litigation.
21
22

23 42. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
24 because this Court and the parties would enjoy economies in litigating common
25 issues on a class-wide basis instead of a repetitive individual basis.
26
27

28 43. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate

1 because the size of each putative class member's actual damages is too small to
2 make individual litigation an economically viable option.

3 44. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
4 because no unusual difficulties will likely occur in the management of the Class
5 as all questions of law or fact to be litigated at the liability stage are common to
6 the putative class and all compensatory relief is concomitant with a liability
7 finding and can be calculated by automated and objective means.
8

9 45. The size and definition of the Class can be identified through
10 Defendant's records and/or Defendant's agents' records.
11

12 **FIRST CAUSE OF ACTION**

13 **Violations of the Electronic Funds Transfer Act**

14 **15 U.S.C. §1693 et seq.**

15 46. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
16 "preauthorized electronic fund transfer from a consumer's account may be
17 authorized by the consumer only in writing, and a copy of such authorization
18 shall be provided to the consumer when made."
19

20 47. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
21 term "preauthorized electronic fund transfer" means "an electronic fund transfer
22 authorized in advance to recur at substantially regular intervals."
23

24 48. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
25
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1 “[p]reauthorized electronic fund transfers from a consumer’s account may be
2 authorized only by a writing signed or similarly authenticated by the consumer.
3 The person that obtains the authorization shall provide a copy to the consumer.”
4

5 49. Section 205.10(b) of the Federal Reserve Board's Official Staff
6 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
7 authorization process should evidence the consumer’s identity and assent to the
8 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
9 provides that “[a]n authorization is valid if it is readily identifiable as such and
10 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
11 at ¶10(b), comment 6.
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14

15 50. In multiple instances, Defendant has debited Plaintiff’s and also the
16 putative Class members’ bank accounts on a recurring basis without obtaining a
17 written authorization signed or similarly authenticated for preauthorized
18 electronic fund transfers from Plaintiffs’ and also the putative Class members’
19 accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),
20 and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
21
22

23 51. In multiple instances, Defendant has debited Plaintiff’s and also the
24 putative Class members’ bank accounts on a recurring basis without providing a
25 copy of a written authorization signed or similarly authenticated by Plaintiff or
26 the putative Class members for preauthorized electronic fund transfers, thereby
27
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1 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
2 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

- 6
7 1. That this action be certified as a class action on behalf of The Class and
8 Plaintiffs be appointed as the representative of The Class;
9
10 2. Statutory damages of \$1,000.00, per Class Member, pursuant to the
11 Electronic Fund Transfer Act, §916(a)(2)(A);
12
13 3. Actual damages;
14
15 4. Costs and reasonable attorneys' fees pursuant to the Electronic Fund
16 Transfer Act, §916(a)(3);
17
18 5. For prejudgment interest at the legal rate; and
19
20 6. Any other relief this Honorable Court deems appropriate.

21
22 Respectfully Submitted this 17th day of July, 2015.

23
24 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

25
26 By: /s/ Todd M. Friedman
27 Todd M. Friedman
28 Law Offices of Todd M. Friedman
Attorney for Plaintiff